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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1942

No. 902

PEOPLE OF PUERTO RICO,
*Petitioner,*

vs.

UNITED STATES OF AMERICA

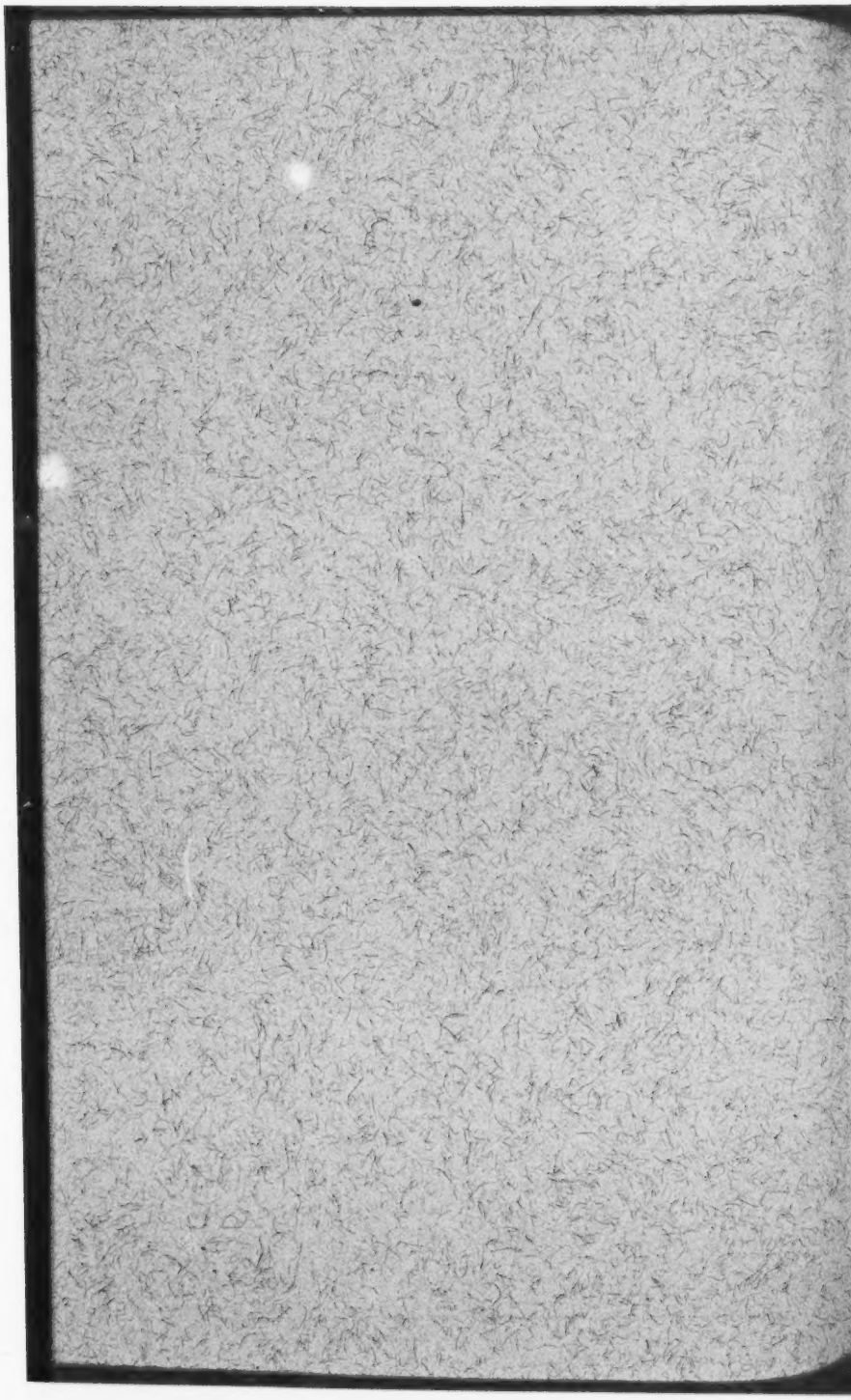
and

CASINO DE PUERTO RICO,
*Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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# Supreme Court of the United States

**OCTOBER TERM, 1942**

**No. 902**

PEOPLE OF PUERTO RICO,
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vs.

UNITED STATES OF AMERICA
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CASINO DE PUERTO RICO,
*Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

*To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:*

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit entered in this case on December 18, 1942,—rehearing denied January 11, 1943,—affirming the judgment of the District Court of the United States for Puerto Rico, which had denied the claim of this petitioner, The People of Puerto Rico, for compensation for the land taken by the federal government in this condemnation proceeding, and had awarded the entire compensation to the other respondent here, the Casino de Puerto Rico, and had accepted a stipulation between that respondent and the federal government as a sufficient basis for fixing the valuation of the land, despite the claim of this petitioner that such valuation was too low.

**Petitioner's Position**

It is the position of the petitioner, The People of Puerto Rico, that:

1.—The declaration of taking of this land by the federal government and the judgment of condemnation, December 4, 1941, *eo instanti* operated as a breach of the condition upon which the Casino had been holding the land under the following *provisos* contained in the Puerto Rico statute[1] under which the Casino had been in possession of the land prior to the taking, *viz.:*

> "*Provided,* That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico shall be used only for non-profit purposes, as a social center and recreation park annexed thereto; *Provided, further,* That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other purposes different from those specified in the preceding *proviso,* such act or acts shall determine the gratuitous reversion of said lot, as well as of all improvements and works constructed thereon, to The People of Puerto Rico; *Provided, also,* That the Commissioner of the Interior of Puerto Rico is authorized to accept the above-mentioned conditions in the corresponding deed".

On this phase of the case the position of The People of Puerto Rico is based on the *second* and the *third provisos* in the statute, as above quoted.

2. In any event, prior to the taking in condemnation and while the Casino was in possession, The People of Puerto Rico retained and possessed a presently existing active possessory interest in the land, capable of valuation, under the *first proviso* in the statute, as above quoted, *viz.:*

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[1] Act, "Joint Resolution", No. 27, approved April 20, 1936, Laws of Puerto Rico, 1936, pp. 1194, 1198; Appendix, infra, pp. 34-37; Sec. 3, pp. 36-37.

"That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico *shall be used only for non-profit purposes, as a social center and recreation park annexed thereto*". (*Italics supplied*)

**Questions Presented**

Manifestly, *the two questions presented* are those above indicated in the heading "Petitioner's Position", both branches of which were overruled by the Circuit Court of Appeals, affirming the order of the District Court,—erroneously as petitioner believes.

The questions are:

1.—Did not the declaration of taking of this land by the federal government and the judgment of condemnation *eo instanti* operate as a breach of the conditions of the *second* and *third Provisos* upon which the Casino had been holding the land, and thereby work a reverter of the title to The People of Puerto Rico?

2.—In any event, prior to the taking in condemnation and while the Casino was still in possession of the land, was not the right of The People of Puerto Rico, under the *first Proviso,* that the lot "*shall be used only for non-profit purposes, as a social center and recreation park annexed thereto*", a then presently existing active possessory undivided interest in the land, capable of valuation like any other undivided interest, and compensable in condemnation proceedings?

**Statement of the Case**

The essential facts are succinctly stated in the opinion of the Circuit Court of Appeals (R. 46-48; 132 F. (2d) [Advance Sheets] 220, at pp. 220-221) as follows:

"On December 4, 1941, the United States Government filed a petition in the court below for condemnation of the land in question, with the buildings thereon, for the purpose of adequately providing 'for recrea-

tional facilities to maintain the morale of the armed forces of the United States and of persons employed in national defense industries.' At the time the declaration of taking was filed the acquiring authority estimated that $125,000 was just compensation for the property and deposited that sum in the registry of the district court 'for the use of the persons entitled thereto'. The defendant, Casino de Puerto Rico, a local corporation, subsequently stipulated with the United States Government that the above sum represents 'the true and fair market value' of the property and agreed to accept that amount 'as full compensation and in full satisfaction of any and all claims of whatever nature against the United States of America by reason of the taking of the premises herein condemned'. In the judgment appealed from, the court below awarded the above sum of money to the defendant, Casino de Puerto Rico, and decreed that the other defendant, The People of Puerto Rico 'have no compensable property interest in the premises' condemned. Thereupon the latter took this appeal * * *.

"The land condemned was originally part of a larger tract which formed part of the public domain of the Spanish Crown. As such it was ceded to the United States by the Treaty of Paris. Subsequently the United States conveyed the land to The People of Puerto Rico and the latter in turn conveyed it to the corporation Casino de Puerto Rico. From 1913 to 1936 the Casino held fee simple title to the entire tract, but in the latter year, to liquidate a mortgage which it had given to a local bank and to liquidate a debt of the local bank to The People of Puerto Rico, the bank being in financial difficulties, the Casino sold and conveyed part of its land to The People of Puerto Rico. The part thus sold is not involved in the present proceedings, but Joint Resolution No. 27, approved April 20, 1936, (Laws of Puerto Rico, (1936) 1194-1198) by which the sale of this part was authorized, provided: [*Here the court quotes the provisos in the statute which we have already quoted above, on page 2, ante*]."

**Opinion of the Circuit Court of Appeals**

The Circuit Court of Appeals, in affirming the order or judgment of the District Court,[2] says (Opinion, R. 48-49):

> "It seems to us obvious that the persons entitled to compensation are those who, at the time of condemnation, have an interest in the land taken which the taking damages or destroys. Clearly the Casino was such a person. There is no evidence that it had been dissolved or that its activities had in any way ceased, nor is there any evidence that it had used the property for anything but non-profit purposes. Neither is there any evidence that it was about to be dissolved or cease its activities or about to make any use of the premises not authorized by the Joint Resolution quoted above. In short, it has never done anything, and there is no evidence that it ever proposed to do anything, in breach of any of the conditions upon which it held the property. Thus up to the time when this condemnation proceeding was brought it had the right to occupy the premises indefinitely within the limits imposed, and this right was cut abruptly off by condemnation.
>
> "The fact that the Casino had only the right to use the property for non-profit purposes does not affect the existence of its interest but only the value thereof, and the question of the value of the Casino's interest is not before us. That value, as already pointed out, was agreed upon in a stipulation entered into between the Casino and the United States.[3]
>
> "The sole question before us is whether or not The People of Puerto Rico, at the time of the taking, also had a compensable interest in the property, which interest the taking damaged or destroyed. Undoubtedly

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[2] The District Court's opinion is on pp. 23-26 of the Transcript of the Record. Its "Decision and Judgment", January 17, 1942, are on pp. 26-29 of the Record.

[3] This ignores the *second phase of* "Petitioner's Position" as above stated (*ante*, pp. 2-3), which is the *second question* under the "Questions Presented" here (*ante*, p. 3), —the question which inspired the "doubt" on the part of PRESIDING JUDGE MAGRUDER (R. 50; 132 F. (2d) at p. 222, quoted, *infra*, p. 7).

> The People of Puerto Rico had an interest in the land in question at the time of its condemnation. Whether that interest was a right of reentry for condition broken, or a possibility of reverter, or something else, we need not inquire, because, whatever its technical name, *the only right*[3] which The People had up to the time when the land was condemned was the right to the land in fee simple if at some indefinite time in the future the Casino should violate any one of the conditions or *provisos* upon which its right of present occupancy was made to depend.[3] And this right of The People of Puerto Rico was destroyed by the condemnation. But, the question remains: What was the value of that right? (*Italics supplied*)

The court continues: "We are aware of no rational means by which to determine the value of the possibility that at some indefinite time in the future the land might revert to The People of Puerto Rico". It says that all that can be done "is to venture a guess", and that "it is elementary law that damages cannot be assessed by mere guesswork", citing authorities[4] which it says "are all in accord and are all squarely in point".

The court concludes (R. 49-50; 132 F. (2d) at p. 222):

> "* * * *If Lancaster School District* v. *Lancaster,* 295 Pa. 112, (see 29 Columbia Law Review 674), relied upon by the appellant, holds to the contrary,[5] we decline to follow it."

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[4] The court cites *Lyford* v. *Laconia,* 75 N. H. 220, 226, and *Chandler* v. *Corporation,* 125 Mass. 544, 547; and says "See also" *First Reformed Church* v. *Croswell,* 110 App. Div. [N. Y.] 294; *Joint School District No. 1, Town of Greenfield* v. *Bosch,* 219 Wis. 181; *United States* v. *1119.15 Acres of Land,* 44 F. Supp. 449; *United States* v. *2,086 Acres of Land,* 46 F. Supp. 411; and also 1 Am. Law Inst. Restatement of Property, Sec. 53, comment (b) and illustrations thereunder.

But see *contra,* and **the distinction,** Supporting Brief, *infra,* Point V, pp. 24-26.

[5] See our Supporting Brief, pp. 20, 22-24.

## Presiding Judge Magruder's Separate Opinion, Expressing a "Doubt"

PRESIDING JUDGE MAGRUDER filed the following separate opinion (R. 50; 132 F. (2d) at p. 222), expressing a "doubt" with reference to the *second phase* of Petitioner's Position"[6]:

> "MAGRUDER, J. It seems clear to me that appellant is not entitled to the whole of the compensation paid, as contended. I agree, also, that on the authorities cited, appellant had no compensable interest, if all it had, just before the taking, was a future interest in the nature of a possibility of reverter upon the condition described. *My doubt is whether The People of Puerto Rico did not have something more than this.* The Casino was required to hold the parcel to the use and enjoyment of the public 'as a social center and recreation park.' Did this not give The People, as a body politic, some kind of a present interest in the property? I would not know how such an interest should be valued; certainly it must be something less than the value of an unencumbered fee. While expressing this doubt, I do not dissent." (*Italics supplied*)

## Reasons for Granting the Writ

The decision of the Circuit Court of Appeals is believed to be clearly wrong on both of the questions in the case[7], both in denying petitioner's right to reversion of the land (the *first phase* of petitioner's position here); and also in denying compensation for the loss of petitioner's present active possessory interest in the land, which existed while it was held by the Casino (the *second phase* of petitioner's position here). The latter is the question with relation to which PRESIDING JUDGE MAGRUDER expressed his "doubt".

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[6] [*Ante*, pp. 2-3]. Petitioner was the appellant in the Circuit Court of Appeals.

[7] See "Petitioner's Position", and "Questions Presented", *ante*, pp. 2-3. And see also Supporting Brief, *infra*, pp. 15-30.

Both phases of the case present important questions of federal law which have not been, but should be, settled by this Court.

The decision of the Circuit Court of Appeals indicates, with reference to the first question of "reversion", a conflict among the decisions of State courts and the lower federal courts; and expressly declines to follow the decision of the Pennsylvania Supreme Court.[8]

And ~~that court~~ the circuit court of appeals, as is pointed out in our Supporting Brief (*infra*, Point V, pp. 24-26), overlooked the important distinction noted in some of those cases between the situations there presented, where the grantors had retained no active present interest in the property, and were not asking for enforcement of the reversion, and the situation in the present case where an active present interest was retained and the grantor is here asking for enforcement of the reversion for the benefit of the public, the people of Puerto Rico.

It is, therefore, respectfully and earnestly requested by the insular government, The People of Puerto Rico, that this petition for a writ of certiorari be granted.

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*Of Counsel.*

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[8] *Lancaster School District* v. *Lancaster, supra,* 295 Pa. 112, which petitioner believes states the correct rule (Supporting Brief, *infra,* pp. 20, 22-24).